

# **EXHIBIT 5**

Attorneys' Eyes Only

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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ORACLE AMERICA, INC., )  
Plaintiff, )  
vs. ) No. CV 10-03561 WHA  
GOOGLE, INC., )  
Defendant. )  
-----)

ATTORNEYS' EYES ONLY

Videotaped Deposition of ANDREW E. RUBIN,  
taken at 333 Twin Dolphin Drive, Redwood  
Shores, California, commencing at 9:31 a.m.,  
Tuesday, April 5, 2011, before Leslie  
Rockwood, RPR, CSR No. 3462.

PAGES 1 - 149

Page 1

Attorneys' Eyes Only

1 Q. Okay. Not even -- not even what you read in  
2 the last paragraph? Any of the --

3 A. No, it was absolutely not implemented.

4 Q. It's your testimony today that Java is not  
5 central to your solution? 10:13:32

6 A. Again, this was a proposal to make Java  
7 central to the solution. You go through phases. You  
8 decide on a strategy and then you implement the strategy.  
9 The tactics are the actual implementation and writing  
10 code of the strategy. And we're in partnership 10:13:44  
11 discussions with Sun because we hadn't yet decided on our  
12 strategy.

13 Q. Okay. But the question I asked you was: Is  
14 it your testimony as you sit here today that Java is not  
15 central to the Android solution? 10:13:55

16 A. In October of 2005, it was not central to the  
17 solution.

18 Q. And today is it true?

19 A. Java as a programming language, the Android  
20 application framework is written in the Java programming 10:14:08  
21 language.

22 Q. Are there any other respects as of today that  
23 Java is central to the Android solution?

24 MR. BABER: Object to form.

25 THE WITNESS: Not that I know of. 10:14:28

Page 36

Attorneys' Eyes Only

1 Q. BY MR. HOLTZMAN: Okay. If you could turn to  
2 the second page of Oracle Exhibit 4, could you read what  
3 you wrote at the top of the page?

4 A. Yes. "If Sun doesn't want to work with us,  
5 we have two options: Abandon our work and adopt a 10:14:41  
6 Microsoft CLRVM and C Sharp programming language or to do  
7 Java anyway and defend our decision, perhaps making  
8 enemies along the way."

9 Q. And could you keep reading, please.

10 A. Next paragraph. "As you can see, the 10:15:05  
11 alternatives are suboptimal so I'd like you to stop in  
12 our Alan meeting and essentially be the good cop. Let  
13 them know that we love Sun and we want to find a way to  
14 do this open source thing."

15 Q. If you would just read the rest of the 10:15:20  
16 message.

17 A. Next paragraph: "I first looked at Eustas to  
18 help me, but he was out of the office, then Sergey. He  
19 was out also." Then I asked Larry if he had any  
20 thoughts. 10:15:31

21 Q. Now, you have a reference here in this  
22 message to two options if Sun doesn't want to work with  
23 Google; correct?

24 A. Correct. And that -- and the email basically  
25 details -- you know, an email is basically a snapshot in 10:15:44

Page 37

Attorneys' Eyes Only

1 time, October 11th, 2005. And at that time, these were  
2 the two options being considered. That doesn't mean  
3 they're the exhaustive set of options.

4 Q. Well, you didn't describe any other options  
5 in this email; correct? 10:16:02

6 A. Not at that time.

7 Q. Okay. And you're writing to Mr. Page;  
8 correct?

9 A. Yes.

10 Q. And Mr. Page is one of the founders of 10:16:09  
11 Google; correct?

12 A. Yes, he is.

13 Q. Now you described those two alternatives as,  
14 in your words, suboptimal. What did you mean by that?

15 A. I would rather build a partnership than go it 10:16:23  
16 alone. As I stated before, the reason you do a  
17 partnership is to accelerate your whole effort.

18 Q. And why did you want to accelerate your  
19 effort?

20 A. Why did I want to get to market faster? 10:16:35

21 Q. Yes.

22 A. Because I think it's a competitive advantage  
23 to come to market as quickly as possible.

24 Q. And you referred to a partnership, it's  
25 better to do a partnership. Is that a fair description 10:16:52

Page 38

Attorneys' Eyes Only

1 of what you just told me?

2 A. Yes.

3 Q. Okay. What partnership are you referring to  
4 there?

5 A. The partnership between Google and Sun. On 10:16:58  
6 the top of the second page, if Sun doesn't want to work  
7 with us, we have two options. Working with us was a  
8 co-development of the next generation of Java.

9 Q. And that would be a co-development with Sun;  
10 correct? 10:17:14

11 A. Correct. That's the definition of  
12 partnership.

13 Q. And so why did you want Larry Page to get  
14 involved in a discussion with Alan? And that's Alan  
15 Brenner; correct? 10:17:27

16 A. Correct.

17 Q. I'm sorry, why did you want Larry Page to get  
18 involved in that discussion?

19 A. Well, they were coming here, and I thought it  
20 would be nice for one of the founders of Google to show 10:17:35  
21 him some love. And I say that in the actual email. And  
22 that means, you know, giving Sun a high-level support of  
23 our partnership within Google I think would have been a  
24 very good message to send at the time.

25 Q. Why is that? 10:17:52

Page 39

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1 STATE OF CALIFORNIA ) ss:  
2 COUNTY OF MARIN )  
3

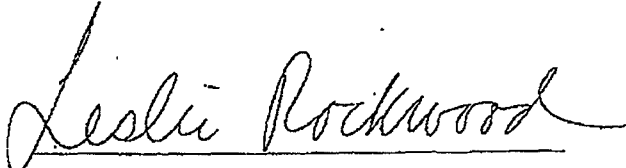
4 I, LESLIE ROCKWOOD, CSR No. 3462, do hereby  
5 certify:

6 That the foregoing deposition testimony was  
7 taken before me at the time and place therein set forth  
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all  
10 objections made by counsel at the time of the examination  
11 were recorded stenographically by me, and were thereafter  
12 transcribed under my direction and supervision, and that  
13 the foregoing pages contain a full, true and accurate  
14 record of all proceedings and testimony to the best of my  
15 skill and ability.

16 I further certify that I am neither counsel  
17 for any party to said action, nor am I related to any  
18 party to said action, nor am I in any way interested in  
19 the outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name  
21 this 12th day of April, 2011.

22  
23   
24  
25 LESLIE ROCKWOOD, CSR. NO. 3462